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THE LOS ANGELES BAR ASSOCIATION

BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION, LOS ANGELES, CALIFORNIA

VOLUME 13
NUMBER 1

SEPTEMBER 16, 1937

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THE DEL MONTE CONVENTION BIGGER — AND MUCH BETTER

By An Observer

GILFORD G. ROWLAND
President State Bar

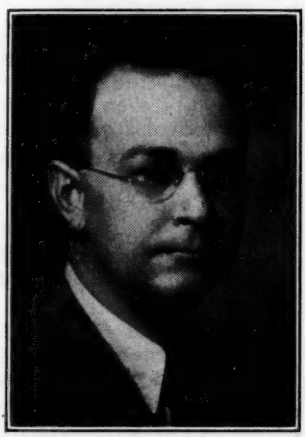
TEN years ago California lawyers decided that the old type of State Bar Association was not much more than a mutual admiration society, meeting once a year and honoring some graying member by electing him president. It was without power to discipline members who strayed from the straight and narrow ethical paths of the profession, or to lay before the legislature proposed changes in procedural law backed by the crystallized opinion of the lawyers of the State.

Consequently there arose a demand for an integrated bar, self-governing, and with power to receive and investigate charges of wrong-doing, and to take rather drastic measures should a wayward member be found unfaithful to his trust. Result: The State Bar Act.

Last week the tenth annual convention of the State Bar of California met at swanky Del Monte, whose surviving "wings" of Early American Stanford White architecture, are dwarfed and desecrated by the hybrid "main" building that fills the space but does not replace the original structure whose peaceful atmosphere and good food—alas! both went with the fire—appealed to discriminating travelers of the world.

But nothing has happened to mar the marvelous landscape, or the Peninsula climate. Trees and gardens still are Del Monte's chief attractions. Not even the swimming pool, with the ever-present "sweet thing," wearing a nickel's worth of knitted wool and doing flip-flaps for the edification and amazement of the aging counsellors and baldish judges, was able to hold the attention of all those who wandered under the great oaks.

Big Attendance: Measured by convention standards, it was the largest and most interesting gathering of lawyers that has assembled in California. The registration records say there were 461 who signed the book and got their buttons; but there must have been many more who did not register, for the crowd overran the place, filled the convention hall at all sessions, jammed the dining room and left a slight overflow for the taproom. Besides, there was a great crowd of wives of members present. Altogether, there must have been a thousand, perhaps 1200 lawyers and lawyers' wives in and around Del Monte. This seemed to indicate that the business of the law is "coming back."



EARLE M. DANIELS
Vice-President

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LOS ANGELES BAR ASSOCIATION BULLETIN

Official Monthly Publication of Los Angeles Bar Association. Entered as second-class matter August 8, 1930, at the Postoffice at Los Angeles, California, under Act of March 3, 1879.

VOL. 13 SEPTEMBER 16, 1937 No. 1

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A PROCLAMATION

By the President of the United States of America.

Whereas the Constitution of the United States was signed on September 17, 1787, and had by June 21, 1788, been ratified by the necessary number of States and,

Whereas George Washington was inaugurated as the first President of the United States on April 30, 1789,

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, hereby designate the period from September 17, 1937, to April 30, 1939, as one of commemoration of the one hundred and fiftieth anniversary of the signing and the ratification of the Constitution and of the inauguration of the first President under that Constitution.

In commemorating this period we shall affirm our debt to those who ordained and established the Constitution "in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

We shall recognize that the Constitution is an enduring instrument fit for the governing of a far-flung population of more than one hundred and thirty millions, engaged in diverse and varied pursuits even as it was fit for the governing of a small agrarian Nation of less than four million.

It is therefore appropriate that in the period herein set apart we shall think afresh of the foundings of our Government under the Constitution, how it has served us in the past and how in the days to come its principles will guide the Nation ever forward.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this fourth day of July, in the year of Our Lord nineteen hundred and thirty-seven, and of the Independence of the United States of America the one hundred and sixty-second.

By the President: FRANKLIN D. ROOSEVELT.

CORDELL HULL, Secretary of State.

Conference Report: The conference started off with a corking good report by Harrison Ryon, Chairman of the Executive Committee of Bar Association Delegates. While he praised the work of the bar delegates during the past year, he did not believe they functioned as well as they might have done; especially when it came to letting members of the Legislature know about the Bar legislative program. He said that not more than 20% of the members of the Legislature knew anything about the program. He urged delegates to do better during the next year if they expected to get proper consideration at Sacramento in 1939.

Conference Delegates: One hundred and twenty-one delegates answered the roll call. The biggest delegation was from Los Angeles, as usual. Incidentally, why is it that San Francisco never has a full delegation? A few men from that city come to conventions year after year, but only a few. However, it makes up considerably in quality what it lacks in numbers. Rumor has it that San Francisco lawyers as a whole do not take to the State Bar. Most of the Northern counties didn't have any delegates in the Conference.

There was more and better cooperation between the two delegations from Los Angeles. Many of the resolutions presented by the Lawyers' Club were supported by the Bar Association crowd, and vice versa. Roy Rhodes is popular and has done a lot for the Lawyers' Club. The Conference Resolutions Committee had a tough job in considering the mass of material put before them, and making its report when the meeting was called to order. Rex Hardy and Laurence Livingston worked well together. They had a little trouble about recommending the tabling of several proposals. So did Chairman Ryon. But it was all washed out when Loyd Wright made a sharp statement about the parliamentary tactics, that brought about a change of the rules.

Action: There was action by the Conference on a long list of resolutions submitted, principally, by the Los Angeles Bar Association, the Lawyers' Club, and the San Francisco Bar Association. A majority of the proposals received favorable action. It would be a fine thing if every member of the State Bar would take the time and interest in his professional association matters to read every word of the conference proceedings, provided the State Bar gives it to them. Space does not permit of even the briefest summary of these resolutions here. Fortunately, the legal newspapers of Los Angeles carried very full reports of the sessions.

THE CONVENTION

President Al Bartlett opened the sessions with as fine a report as has yet been made by a retiring president. It showed a familiarity with the operations of the State Bar, its accomplishments and its aspirations, that was surprising. He devoted a large part of his talk to the recent legislation regarding the educational requirements for admission to practice in California. His talk was really inspirational and the convention gave him a great hand.

Controversial: As was expected, the report of the Committee for Southern California on Investigation of Activities of Insurance Adjusters, Paul Valee, Chairman, aroused a lot of interest. The report was printed in the *State Bar Journal Supplement* for August, and really should be read by every lawyer in the State. Incidentally, the Committee for Northern California, on the same subject, made no report. The opposition to the Committee's recommendations was active, resulting in putting it over to 1938 for a further report.

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Plebiscite: One of the surprises of the Convention was the prompt adoption of Loyd Wright's resolution that the Governor be memoralized hereafter, and before he fills any vacancies existing in the Superior or Municipal Court bench, he first request the State Bar or the oldest Bar Association in the city or county to take a plebiscite of all the lawyers of such city or county as to the qualifications and fitness of not more than five of the candidates being most seriously considered by the Governor to fill each such vacancy. It will be interesting to learn the Governor's reaction to the request.

Broadcasting Trials: There was quite a bit of interest in a resolution, finally adopted after numerous changes in phraseology, to the effect that it lowers the dignity of the Court to allow radio broadcasting of judicial proceedings, or to allow photographs of litigants or witnesses in courtrooms during court sessions. The resolution recommended that these practices be discontinued.

Good Lines From Convention Speakers: Judge Otis, in his Morrison lecture: "I have taught constitutional law a good many years, but lately have been considering a change to the teaching of Roman law because it has some degree of permanency."

Lawrence Livingston, of San Francisco: "When I am willing to give a doctor a lien on my appendix, a dentist a lien on the gold in my teeth, and a banker a lien on my immortal soul—then I will be in favor of an attorney's lien law."

Highlights: Joe Crider and secretarial staff sending telegrams to other Del Monte guests. . . . Wonder "whut fer?" . . . Some say he sent one to himself. . . . Earl Daniels tap, tap, tapping in the Tap Room; said he was peering into the future. . . . Laurence Livingston, had answers to all the questions, and gave them, too. . . . L. H. Phillips, couldn't see the electric recording system, but he knew it was behind the curtain; said so, hisself. Gee! But Harrison Ryon hated that "tablin" stuff. He wouldn't even sit down at a table in the bar.

Rex Hardy's well-worded and well-delivered appeal for cooperation among lawyers. All the way from Knights Hospitalers of St. John of Jerusalem to Del Monte in five minutes without a hitch-hike. . . . Isidor Dockweiler having a good time pouring the old "oil" on convention waters when the boys got too hot. . . . Betty Graydon making the best speech, and taking one minute to do it. . . . Norman Sterry, with a brand new story; got some belly laughs, except the second time he told it to Allen Ashburn.

Unusual Sights: Rosalind Bates praising Loyd Wright! Marion Betty seconding Norman Sterry's motion, and Norman's come-back: "I still think I'm right." . . . "Bus" Matthay looking for the steak list on the Del Monte menu; there ain't none. . . . Gentlemen of the Press, Elmer Cain and Eddie O'Day, taking it easy because of the new electric recording system. . . . Popular young Superior Judge from Santa Monica pausing at the tap room door to inquire if it would be proper for a judge to go in. . . . Chairman Belcher making his own rules when they threw too many motions at him. Thereby getting many "goats." . . .

ROUND TABLE CONFERENCE

THE October meeting of the Los Angeles Bar Association will be held in conjunction with a Round Table Conference on Evidence, in the College of Law Auditorium of the University of Southern California.

Beginning at two o'clock on Thursday, October 28, and ending at six o'clock P. M. of that day, members of the bench and bar are invited to attend a discussion of a series of eight subjects covered in a tentative draft of a partial re-codification of the California law of evidence.

At six-thirty o'clock P. M. the regular monthly meeting of the Association will be held at the Foyer of the Town and Gown Club on the University campus.

According to Alex M. Davis, chairman of the committee in charge of arrangements, the principal speaker has not yet been chosen.

The success of the conference and Bar Association meeting on the University campus last year has created much enthusiasm for the October gathering this year.

Eight topics dealing with the law of evidence will be presented for discussion, all of which are covered in the tentative draft of a partial re-codification of the California law of evidence prepared by a committee consisting of Dean William G. Hale, of the Law School of the University of Southern California and vice-chairman of the California Code Commission; Prof. James B. McBaine, of the School of Jurisprudence of the University of California; and Prof. Clarke B. Whittier of the Stanford Law School, under the authorization of the California Code Commission.

According to Dean William G. Hale the list of subjects to be discussed are the following: Devices in Aid of interpretation of code provisions; Abrogation or substantial revision of the dead man's statute; proposed revision of the law of privilege as contained in Section 1881 C. C. P. with special reference to husband-wife, physician-patient, public-officer-informant, newspaper employees; revision of privilege against self-incrimination; aids to memory; scope of cross-examination; impeachment of one's own witness and credibility of witnesses.

The subjects will be parcelled out to active trial lawyers and judges prior to the conference in order that they will be in a better position to lead the discussion and encourage comment.

Dean Hale makes the following statement: "The draft has not yet been considered by the Code Commission. It is being distributed for purposes of study and criticism by members of the California bench and bar. Copies are available for study at the County Law Library, the office of the Los Angeles Bar Association and the University of Southern California. Comments, criticism, and suggestions are solicited from all persons studying the tentative draft. It is hoped that much good will come from the round table conference and that all those interested will come and actively participate in the discussion."

LEGAL ETHICS COMMITTEE OPINIONS

INQUIRY has been made of this Committee as to whether or not the inclusion of the names of judges of California courts, followed by a designation of their respective offices, in circulars or hand-bills of a financial institution is proper. Such circulars or hand-bills state in effect that the integrity of the institution using such means of advertising is assured by the character and standing of the men who are its directors.

In the opinion of the Committee, the use of the names of judges in such circulars, hand-bills, or by other similar advertisements is improper. Judicial Canon 25 of the American Bar Association provides as follows:

> "He should avoid giving grounds for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute either to the success of private business ventures or to charitable enterprises. He should therefore not enter into such private business or pursue such a course of conduct as would justify such suspicion nor use the power of his office or the influence of his name to promote the business interests of others. . . ."

There is more than a reasonable suspicion that the use of the names and judicial titles of judges of the courts in listing the directors of a private business, in circulars, hand-bills, or otherwise, is calculated to promote the confidence and interest of the public therein. In fact, there would seem to be no other conceivable purpose therefor.

The foregoing opinion, like all opinions of this Committee, is advisory only (By-laws, Article VIII, Sec. 3).

COMMITTEE ON LEGAL ETHICS
By DELL A. SCHWEITZER, *Chairman.*

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THE LORD MACAULAY LETTER

SINCE PRESIDENT ROOSEVELT, in his recent Roanoke speech, officially lifted the long-forgotten letter of Thomas B. Macaulay out of the dim past and put it on the first page of every American newspapers, THE BULLETIN takes some pride in the fact that it printed the now-famous letter in the May, 1936, issue (*The Durability of American Institutions, Letter of Thomas B. Macaulay to H. S. Randall,* May 23, 1857.)

A copy of the letter was sent to the BULLETIN committee by a member of the Association, whose name we do not now recall, and because of its unique historical interest, and prophesies as to the political future of the United States, was promptly printed without comment. Whether THE BULLETIN "revived" interest in Lord Macaulay's prophesies as to what would happen to us, we do not know; however, it did receive the attention of members of the Bar and aroused considerable discussion.

> **"The day will come," says the distinguished Englishman's letter, "when in the State of New York, a multitude of people, none of whom has had more than half a breakfast, or expects to have more than half a dinner, will choose a Legislature. Is it possible to doubt what sort of Legislature will be chosen?"**

Of course Lord Macaulay's "observation sight" was set no higher than the boundaries of New York State—California and some other Western States not having yet impressed their existence upon the English mind—nevertheless his prophesy has not lacked at least partial fulfillment in some States far beyond the Empire commonwealth. One need only look back a few years to the days of Huey Long, the Epic movement, the Townsend plan, Technocracy, Utopian plan, and other now defunct "movements," and to some of the legislation sponsored by their legislative representatives in a number of States, to realize that the Whiggish Earl was not so far out of line.

As a matter of fact, this Macaulay letter was attacked by Republican James A. Garfield as far back as 1878, in a political campaign. By inferences, it would appear that Macaulay is, in this country, classed as a Tory, whereas, as a matter of British history he was a Whig, which, in England, was the equivalent of a Liberal. "Whig" is defined as "a member of the Liberal Party in England in the Eighteenth and Nineteenth Centuries as opposed to a Tory or Conservative."

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MINIMUM WAGE-MAXIMUM HOUR LEGISLATION

By Augusta Rosenberg, of the Los Angeles Bar

THE history of minimum wage-maximum hour legislation in this country has been a varied one. Traditionally, such legislation has been designed to apply to women alone. The first laws regulating the hours and wages of women were enacted at a time when it was believed that women in business and industry needed special protection. (See The Bulletin, January, 1937 "Minimum Wage Law for Women" by Ernestine Stahlhut.) There was no intention on the part of the lawmakers that the statutes, instead of protecting the women workers, would actually discriminate against them. Yet in practice that is exactly what happened. Partly as a direct consequence of the discriminations, partly because of other factors, public opinion gradually changed until today it is the belief of many persons that minimum wage-maximum hour legislation should be based on the nature of the work and apply equally to both men and women employees.

Last year, the Supreme Court's decision in the *Morehead* case[1] was hailed as a victory by the opponents of sex-linked protective legislation. In that case, the opinion was expressed by the majority of the court that the evil at which the New York statute was aimed was the same in the case of men as of women, and as men in need of work are as likely as women to accept the low wages offered by unscrupulous employers, a statute prescribing minimum wages for women alone "would unreasonably restrain them (the women) in competition with men and tend arbitrarily to deprive them of employment and a fair chance to find work."

Was this conclusion correct? Impartial surveys certainly give a strongly affirmative answer, as do the reports of individuals. Take, for example, the following comments:

A restaurant worker in North Dakota, referring to the minimum wage law in that state, declares:

> "Men and boys are replacing women and girls in certain industries because of regulations applying to women workers. This is especially true of work in the dining rooms and kitchens of hotels and cafes. Lately one cafe in my town replaced all of its women workers with men. In other restaurants many boys are employed. We have only men working in our kitchen now. There were three women when I was first employed. The change was made because men can work longer hours. Where women are still employed, the minimum wage has tended to become the maximum."[2]

OPPOSITION

A former labor organizer opposes any minimum wage law for women only because,

> "It discriminates against women and handicaps labor. Many months ago I visited a laundry and asked the girls, 'How is it going, this minimum wage?' They said, 'Rotton'. You see, the increase in wages does not come from the boss. It is made up from the wages of some of the other girls who are working there. They have to kick in. The girls told me that the bosses took from the higher-paid girls to make up the budget."[3]

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[1] *Morehead v. New York*, 80 L.ed.1347, decided June 1, 1936, holding invalid the New York minimum wage law.
[2] *Equal Rights*, page 77, June 1, 1937.
[3] Idem, page 77.

Many tales are current regarding the discriminations resulting from the New York minimum wage law. A bindery worker from that state says:

> "We women in the book-binding industry have suffered physically and mentally for the so-called welfare legislation for women only. We suffered physically because our hours were reduced by law so that we could not earn adequate wages to furnish us with proper food, clothing and housing. Mentally, because in our midst we have a number of ambitious women who know they can never advance to executive positions, through those laws. Prior to 25 or 30 years ago, the head executive of every bindery was a woman, and many well-paid mechanical jobs were held by women. Today, the employer, realizing he cannot give a woman an hour or two overtime work at night to finish a job, gives the opportunity to her male competitor. Hence the ambitious, clever woman has to sit back and look on while somebody who has no right to her job is working at it."[4]

In Miss Stahlhut's article, she refers to the fact that the Ohio minimum wage law has been held constitutional. Here is the experience of a woman in Ohio:

> "I have worked for a dry cleaning establishment in Ohio for four years at approximately 28 cents an hour. The first week in December, 1936, right after the minimum wage for women went into effect, I lost my job because my employer felt that he could not pay me the minimum wage set by law (35 cents an hour.) A young man, who underbid the minimum wage, got my job. Since that time, I have been unemployed."[5]

These opinions are not the isolated reactions of a few prejudiced women. They represent actual factual conditions which exist wherever sex-linked "protective" legislation is found. Consequently, it was a blow to the opponents of such legislation when the Supreme Court rendered its famous 5-4 decision in the *Parrish* case,[6] in which it expressly overruled its previous holding in *Adkins v. Children's Hospital,* 261 U. S. 525.[7]

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[4]Idem, page 78.
[5]Idem, page 78.
[6]*West Coast Hotel Co. v. Parrish,* 81 L. ed. Adv. Ops. 455, decided March 29, 1937, holding valid the Washington minimum wage law.
[7]In the *Adkins* case, a minimum wage statute of the District of Columbia, similar to the Washington law, was held invalid by a divided court in 1923.

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The strong dissenting opinion in the *Parrish* case takes a far more logical view than does the majority ruling. The dissenting minority pointed out that:

> "Women today stand upon a legal and political equality with men. There is no longer any reason why they should be put in different classes in respect to their legal right to make contracts; nor should they be denied in effect the right to compete with men for work paying lower wages which men may be willing to accept. And it is an arbitrary exercise of the legislative power to do so. . . Does the legislation here involved, by restricting only the rights of women to make contracts as to wages, create an arbitrary discrimination? We think it does. Difference of sex affords no reasonable ground for making a restriction applicable to the wage contracts of all working women from which like contracts of all working men are left free. Certainly a suggestion that the bargaining ability of the average woman is not equal to that of the average man would lack substance. The ability to make a fair bargain as everyone knows does not depend upon sex."

EQUAL APPLICATION

The case against maximum hour legislation for women alone is similar. The opponents of such laws contend that maximum hour legislation is desirable but that it should apply equally to both men and women. In this connection, it is interesting to note the fate of a measure introduced in the last session of the California legislature. Assembly Bill No. 2435 provided: "The maximum number of hours for women workers in every occupation, trade and industry shall be forty hours per week."

The proposed law was so sweeping in scope that merely a superficial analysis proved that it could not be enforced. However, wave after wave of protest poured into Sacramento. Much, but not all, of it came from business and professional women. The California Federation of Business and Professional Women's Clubs (an organization of approximately 7,000 women) was especially concerned. The women argued that the proposed bill was masquerading under the guise of "protecting" the woman worker but that practically it would only "protect" her out of her job, business or profession. So effectively did the women present their case that the bill was killed in committee.

The organized business and professional women have long taken the stand that there is only one fair basis for similar legislation and that is to place any minimum wage and maximum hour limitation upon the job, rather than upon the sex of the worker. If a sincere and honest attempt is made to establish minimum wages and maximum hours for the worker and to base the limitations upon the work to be done, the benefits would accrue to any worker holding the job, whether a man or a woman. Further, if women are to have economic independence, they should have the same freedom of action as men; the same freedom to contract as men. Women, as well as men, are citizens; they should be subject to the same laws and regulations as men and should have the same legal rights and privileges. Today, most protective labor laws place women and children in one catagory and men in another. Women, as well as men, are entitled to be classed as adults. Hence protective labor laws should refer to the worker as a "person" or "adult" in order to give the worker, regardless of his or her sex, equal opportunity.

THIS IS YOUR FORUM — USE IT!

THE BULLETIN invites members of the Bar to send in for publication, brief comments upon any subject of interest to lawyers—for example: New laws, defects of law or procedure; abuses or injustices arising from the operation of existing laws, rules or regulations. Such comments, if suitable for publication, will be printed in THE BULLETIN from time to time. As an example of articles helpful to lawyers, comment on the amendment to Section 702 C. C. P., and the effect thereof is printed below:

Section 702 C. C. P. Amended.

> "If judgment debtor, redemptioner, or tenant in possession, refuse the right of entry to the purchaser, his agent or contractor, such purchaser may petition the court, out of which execution or order authorizing the sale, was issued, in the same manner as hereafter provided for determining the amount due to the purchaser in the event of a disagreement, and the court may issue an order authorizing purchaser, his agent or contractor, during reasonable hours, to repair and maintain the premises."

Prior to this amendment purchasers at judicial sales were without a remedy when they desired to repair or maintain the premises during the period of redemption if the tenant in possession refused to cooperate by permitting either the purchaser or his agent to enter the premises to make such repairs. During the period of redemption the ensuing damage to improvements may cause considerable loss, and in the case of a foreclosure of a mortgage such damage may destroy, in flagrant cases, the utility of the dwelling or habitation.

It is now possible for a purchaser under the amendment to secure a writ of entry and by timely repairs preserve the security and at a minimum cost prevent resulting damages to the improvement.

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FUNCTION OF JUVENILE COURT IN THE COMMUNITY

By Robert H. Scott, Judge, Superior Court

A PALE, undernourished lad of 16 years, came in just as juvenile court adjourned a short time ago. His father is in jail; his mother is dead. The boy wanted us to get his father out of jail, into the sheriff's road camp while he serves his eleven months' term as a condition of probation. We were asked if we would help the lad get a job—any job—for there is no money coming in—no relative in the state, and only one motherly friend to care for him; "but you see, judge, she can't afford to keep me and I guess I eat an awful lot." Our juvenile court machinery started to turn; the facts are being investigated and a program developed through private agencies to include a home, clothes and vacation camp. When a boy wants to talk with a juvenile court judge he has that right, and the joy of service seems personal and real when you can place the strong arm of the court protectingly about the shoulder of a child who asks your help.

But, in Los Angeles County, with a population nearing three million souls, if the juvenile court were limited to personal counsel and help to individual children with the judge as an amiable father confessor to erring and distressed youth it would rapidly dwindle into useless sentimentalism. It has long since passed the stage of being a one-man process. It has only one judge assigned to it from the fifty judges of the Superior Court, but it has a commissioner and two referees who make findings and recommendations and in a very real sense exercise judicial functions. A hundred skilled men and women juvenile probation officers investigate and report at the child's hearing on home, school and community conditions and supervise court wards released to them for social conditioning. In conjunction with the forestry department two mountain work camps are operated by the probation officers, where character and good citizenship are developed in some 150 older lads whose misguided energy on our city streets has led them to court. A twenty-four hour high school for 75 girls is maintained by the county for the exclusive use of juvenile court wards; 267 private institutions and boarding homes cared for 2,064 court wards last year, in addition to 498 children sent to three state schools and two state hospitals.

PETITIONS

The nature and extent of the juvenile court must be determined by the character of its cases. Ten years ago any one might file a petition and have a child brought into court. The probation officer is now required to scrutinize and approve petitions before they can be filed. This has led to the development of a body of policies which regulate the acceptance of petitions for filing and any juvenile court statistics must be read in the light of these policies. When we say for example, that the monthly average of 334 new petitions filed so far this year is no greater than the number last year, we may not glibly say conditions are Better or worse. For, the U. S. Children's Bureau has just reminded us:

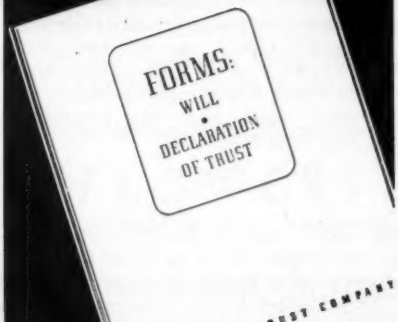
> "Juvenile-delinquency rates are essentially a direct expression of the amount of delinquency dealt with by the courts that was brought to their attention by individuals and organizations concerned with the welfare and protection of both the children and the community. The rates of the courts are determined not only by the amount of delinquency in the

respective communities served but also by the policies of the police department and other agencies in referring cases to the courts, the intake procedure of the courts—particularly the extent to which they undertake to deal with minor cases—the relationship of the courts to other agencies in the community, and the extent to which the community provides services for children which tend to reduce the necessity for court action." (U. S. Children's Bureau publication No. 235): (pp. 6 and 7.)

The function of the juvenile court is:

(1) to work with the police, schools, welfare agencies in safeguarding the child and society;
(2) to efficiently handle the cases which are its primary responsibility;
(3) to exclude cases involving custody of children in divorce cases, adoptions and guardianship when they can be adequately cared for otherwise;
(4) to help pioneer in providing care for the mentally retarded;
(5) to wisely use its power to criminally prosecute adults;
(6) to aid in preventing delinquency and promoting understanding of the court.

The police and sheriff present petitions concerning juveniles who have stolen automobiles, burglarized houses or service stations or been involved in sex or other offenses, and they recognize that the methods used by the juvenile court are consistent with the ultimate protection of society. Drs. Collins and Drever of the University of Edinburgh point out that "the attitude of society toward the delinquent or young offender has in recent times become essentially different from its attitude towards the criminal. The tendency is more and more towards



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regarding the young offender as a protege, rather than as the enemy of society and recent legal and psychological developments in this connection have been largely from this point of view. It is gradually coming to be realized that, in dealing with a delinquent's offence against the law, society should act as the guardian and protector of the young offender, and the guardian of its own interests in the future citizen, rather than as a prosecutor in the law court, with a view to bringing the offender's guilt home to him, so that punishment may follow." (Psychology and Practical Life, p. 274.)

CATCHING STEP

Catching step with the scientific spirit of the times the police and sheriff now have juvenile bureaus which apply in police work the principles of the juvenile court so that during the investigation of the case and the initial contact with the child a reconstructive process is started which carries through the court hearing and later treatment on probation or in an institution. Officers imbued with the traditional spirit of the police are not easily transformed into social workers but new recruits are inspired by their superior officers' attitude to study juvenile methods, community conditions and human behavior. Every policeman is in fact a judge in the cases which he adjusts out of court. He must decide not only whether the value of the property stolen makes it grand theft or petty theft, but also whether the lawless act is a symptom of a character deficiency demanding extended treatment or merely a prank requiring only a warning to the child or his parents. The police of the future will go further and concern themselves with the welfare of the children of those who are arrested and sent to jail or prison. Children left behind when father or mother go to jail become a menace to society. Indifference to their poverty and anguish must not lead us to forget that antisocial qualities develop easily where there is hunger and resentment. As Sheldon Glueck observes in his "Crime and Justice" (pp. 187-188): "A condition frequent in the households of delinquents and criminals is the inebriety, immorality or criminality of parents or near relatives. It requires no elaborate reflection to conclude that the moral climate in such families is not conducive to the wholesome growth of children. The parents and near relatives are not likely to set an example of socially acceptable conduct to their offspring; indeed, in such households criminality may be said to be almost a tribal tradition." Our records show that hundreds of boys whose fathers have gone to prison have become most serious delinquents. Read Sanford Bates' "Prisons and Beyond" and imagine yourself in the position of a prisoner or a member of his family and see whether your cloak of virtue might not be pierced through under like conditions.

The juvenile court must cooperate with the police in protecting the community against youthful misconduct. An alarming increase in theft of automobiles this year is due in part to an impression that a boy who took a car would surely receive probation for a first or second offense. This illusion had to be dispelled. So, for example, when one gang of twenty boys was brought in for a total of three hundred thefts each boy had to be removed from the community and placed in an institution or boarding home. To promote mutual understanding the police invited the juvenile court judge to outline the objectives, resources and limitations of that court to the ranking officers in their department and also to new recruits during their special preparation for police work. The relationship of the court to the police is complicated by the fact that we have many police departments in small cities with whom there is little contact. In a county with an area of 4,085 square miles embracing a total of 44 incorporated cities it is apparent that without some clearing-house of information

the police of various communities may handle, informally, misdeeds of one child committed in their respective areas without being aware of the fact that the total sum of such a child's misconduct marks him as in need of a court hearing and extended supervision. Such a clearing-house is now being developed through the probation department.

THE SCHOOLS

In its relationship to our schools a most interesting experiment has been taking place. Judge Henry S. Waldman, judge of the juvenile and domestic relations court, Elizabeth, New Jersey, said last year:

> "The schools are an important part of the community. They are not doing their part to reduce delinquency, in fact, the schools are the greatest feeders for the juvenile court. By their incompetent handling of the maladjusted child they are unwittingly doing much to spread delinquency." (Year Book National Probation Assn. 1936, p. 313.)

With something perilously close to this point of view, our juvenile court suggested some months ago that corporal punishment in our city schools should be eliminated. We found this means of discipline was felt to be necessary because the juvenile court and law enforcement agencies were not supporting the schools in maintaining law and order. A committee of teachers had recommended that our schools avoid the juvenile court wherever possible as being worse than useless.

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A series of six conferences covering the Los Angeles city school district and many other conferences in the county area have been held, attended by the school and court officials. We have agreed that the juvenile court is a part of the educational system of the State and the coercive power of the law should not be employed in a way which would injure the personality of the child. Our court resources are limited as to temporary detention, diagnosis, supervision on probation and institutional care, and our schools cannot expect the court to assume responsibility for every maladjusted child. They must expand their facilities for child guidance and work with every child welfare agency in the community. Modern educational methods and a curriculum adapted to the individual child will eliminate much school incorrigibility and truancy. As Lewis Meriam observes, "rapidly is passing the old view that the child must fit the school and, if he does not, it is his own fault. The educators are recognizing that the school system must be so diversified that it fits the needs of all classes of children. For the typical or average children the customary fairly large group classes have their place; but for children who, for one reason or another, vary widely from the norm, special individual treatment is necessary—the individual case-work techniques of the social worker are required. Through the school system lies one of the best avenues for the prevention of delinquency and the correction of curable defects." (The Social Service Review, Vol. XI, March 1937, p. 28). With the schools doing their part the juvenile court will take jurisdiction over those leaders and trouble makers who are the center of any school or community difficulty, and will employ its resources for diagnosis and treatment on those children.

A dependent child may properly be cared for by the County Welfare Department or private agencies unless their resources are inadequate to protect or provide for the child. Even when the court intervenes, it should continue its care only until conditions permit a return of responsibility to non-judicial departments.

When a petition is filed the court naturally assures itself that the investigation and presentation of the case is comprehensive, that the temporary detention of the child is suitable, and the physical and mental diagnosis adequate. The investigation must establish jurisdictional facts and, together with the diagnosis, should suggest the treatment needed. The court must determine whether the child is to remain with the parents or be placed in the care of a probation officer or an institution. The probation officer supervises the child who has been sent home, or if the home is unfit it is he who selects the boarding home to which the child is to go. When a boy is sent to the forestry camp it is the probation officer who takes him there and looks after his welfare. The court on the other hand may place the child in a private institution or state school. Dr. Pauline V. Young, in her recent book "Social Treatment in Probation and Delinquency" gives an inspiring picture of the procedure locally employed of which I have given only a brief summary.

SCOPE OF COURT

The question has been asked: "Why can we not extend the scope of the juvenile court to include all matters relating to the custody and welfare of children including adoptions, custody of children in divorce cases, guardianship and habeas corpus of minors?" A superficial consideration would indicate that such a procedure would be desirable, but further analysis of the problem indicates that this proposal would be unwise. Where there is a controversy between parents over the custody of a child, in matters where a guardian seeks to be appointed or a writ of habeas corpus is brought to obtain the child's custody,

the court should have the benefit of an impartial investigation and report by a trained social worker as to the fitness of the person into whose care the child is about to be placed. Under existing law, if no fit person seeks the child's custody, the department of the Superior Court hearing the case, other than the juvenile court, usually with the consent of the parties entitled to the legal custody, can now place the child in a suitable neutral home where it may receive proper care. This type of social treatment is available to any department of the court and even now only a few cases a year require that the juvenile court assume custody of the child and act for its welfare in lieu of natural parents or guardian. Adequate investigations have been for many years and now are made in adoption cases, and supervision in such cases is available through licensed child placing agencies. These cases are heard by the judge who is assigned to the juvenile court, but he hears them merely as judge of the Superior Court. In domestic relations matters, social workers are now available to the court for the service just indicated. In guardianship and habeas corpus matters the courts can make larger use of these facilities for investigation. In other words, the juvenile court should be reserved for those cases where a serious question is raised as to whether the custody of the child should be taken from the natural guardians and vested in the state. An effort should be made not to throw into the juvenile court every case where child welfare is involved, but to encourage and assist natural parents and guardians to assume their own responsibility and to develop agencies in the community adequate to meet the needs of childhood and then to require of the juvenile court an efficient and economical handling of those cases which are its primary responsibility.

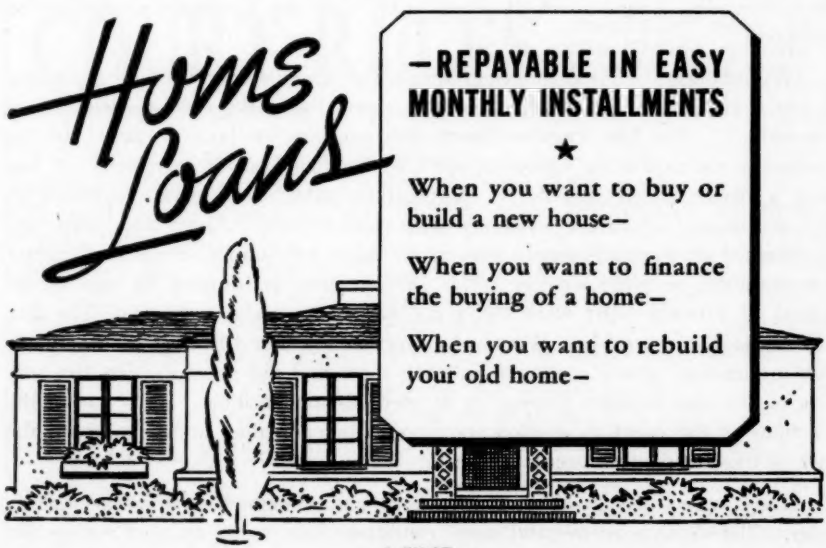
Unless we adhere to this policy the juvenile court must of necessity abandon its high standard of efficiency or tremendously increase the cost of operation of the court without results which could possibly justify it. The legislature was this year urged to adopt a measure which would pour all of these cases into the juvenile court with a declaration that it would save the taxpayers millions of dollars. A conservative estimate showed that the present annual budget of $1,000,000 for the juvenile court, probation department and allied instrumentalities, would have been greatly increased. A state-wide committee is being formed, including lawyers, judges, educators, probation officers and social workers, who will analyze these problems and reach further conclusions on the basis of independent research. Unless we have reached the place in our thinking where we believe that any child might well be made a ward of the juvenile court merely because a question of its custody is presented for judicial determination, such a law should not be passed.

SPECIAL ATTENTION

It is increasingly evident that the feeble-minded and psychotic child must receive special attention. The law makes these children a special concern of the juvenile court. They need special educational treatment, social adjustment, and they frequently need custodial care. We may not laugh at the mentally underprivileged. Dr. Eleanor Rowland Wembridge's "Life Among the Low-brows" paraphrases and puts into the mouth of the moron the speech of Shylock and has such an one say: "I am a moron. Hath not a moron eyes? Hath not a moron hands, organs, dimensions, senses, affections, passions? Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as the intelligent are? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? And if you wrong us, shall we not revenge? If we are like you in the rest, we will resemble you in that—the villainy you teach us, we will execute, and it shall go hard, but we will better

the instruction." "No words," she adds, "could better fit the moron who must lead a citizen's life without a citizen's equipment, and the somber concluding threat is no less ominous because no moron would have the wit to make it." In our schools we crowd mentally retarded children into classrooms with those who are normal with results unsatisfactory to both. As John L. Tildsley, assistant superintendent of schools of New York, points out, we have seriously retarded our school program for the normal child by slowing his progress to the pace of the mentally underprivileged. At the same time we have put these less fortunate children into hopeless competition, with a consequent sense of inferiority and maladjustment. Our state institutions for the feeble-minded are overcrowded and even with the $2,000,000 for new buildings included in the current state budget, they cannot hope to carry the load of those who are suitable for state care.

A large and perplexing problem is presented by the child for whom a special type of training would be of value. Instead of attempting to teach academic subjects to these children we should train them to do simpler tasks at which they can in time earn a living. When we concentrate in one school a large number of mentally retarded or socially maladjusted children, unless the personnel and equipment are distinctly superior, the situation is not improved. Irritated by the hopelessness of the picture, the school personnel emotionally reacts to the child's misconduct and in many instances inflict corporal punishment on the child as a response to their own consciousness of inadequacy or bad temper. The proposal to establish a twenty-four hour school under the school department is to be seriously studied because the school man who might select children for



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such placement would have already reached an emotional stage where his reactions to the child's misconduct would unfit him to decide impartially the appropriate remedy to be applied. A state-wide committee has been formed to study this problem, composed of leaders in psychiatry, psychology, education and social work who will seek agreement on a state and county program for education and care. It seems likely that the juvenile court, functioning through some county agency, must undertake to provide the custodial care necessary in the nature of a farm colony for the defective delinquent child, while the school department provides him with a type of educational program fitted to his needs.

The power of the juvenile court to hear cases of adults charged with contributing to the delinquency of minors should be used primarily to compel cooperation for the welfare of the child. The liberal provisions of that law were never intended to permit wholesale prosecutions of adults whose personal conduct might be unacceptable to the judge. A judicial officer is not selected to sit in judgment on the personal morals of every fellow citizen, but to safeguard each child and the community in the light of existing standards of thought and conduct. As Mr. Justice Cardozo has observed, "A judge is to give effect in general not to his own scale of value, but to the scale of value revealed to him in his readings of the social mind." The juvenile court judge may be opposed to liquor and gambling but for the judge to undertake in our present day community, to put in jail or fine every adult who drinks or gambles in the presence of a child, would be to invite the repeal of our laws relative to contributing to the delinquency of minors which, when wisely used, are a splendid protection for childhood.

We may ask: "To what extent should the juvenile court assume a position of leadership in matters of child welfare, especially in the field of delinquency prevention?" For Los Angeles County this question has been answered for the present by the expanding service of our Coordinating Council movement. It has been a demonstrated success in coordinating public and private agencies in each community which are concerned with child welfare. About nine years ago the Council of Social Agencies set up a "court cooperation committee" under the committee on child welfare. This subcommittee is bringing to bear on all aspects of juvenile court work the x-ray eye of the social technician. The Bar Association, Lawyers Club, Women Lawyers and Junior Chamber of Commerce have committees which study the juvenile court and aid in expressing the attitude of law and business concerning its methods and facilities. It is one of the functions of the court to develop community understanding and support on the part of these and other organizations.

These views are based on observations and thought over a period of ten years. The social, economic and moral conditions have vastly changed during this time and new methods have been developed to meet new problems. Through it all has come a deep appreciation of the noble character of social workers, officials and school folks who are co-laborers with the court in the perilous but joyous task of service to humanity.

L. A. COMMUNITY CHEST

LISTED among many specific services rendered the needy by the Family Welfare agencies of the Community Chest, is adjustment of "legal entanglements." Family rehabilitation, and "reconstruction," many times can be effected directly through adjusting involved property situations, unjust suit, financial involvements needing legal advice, and marital differences. Often, after agency investigation, the clients are referred to the Legal Aid Clinic of Southern California, also a Chest agency.

Leading members of the legal profession take active part among the 18,000 or more volunteers, in all Community Chest appeals. Next month will usher in the fourteenth annual appeal of the Los Angeles Chest. Workers will endeavor to encourage and broaden the spirit of neighborliness in the community.

Good neighbors mean a better community, socially and economically. Relief needs are greater at the present time among those ineligible for governmental aid, than many of the 88 Community Chest agencies can handle. This is due to inadequate financing, the result of under-subscription to the Chest last year.

Among the representatives of the legal profession active in the Los Angeles Chest throughout the year and during the appeal, are: Judge Robert H. Scott, vice-chairman public employees division; Leroy M. Edwards, chairman speakers bureau; Joseph Scott, vice-president; George W. Dryer, and Judge Benj. F. Bledsoe, members board of directors; Charles Baird, Jr., Oscar Lawler, E. A. Meserve, Joseph P. Loeb, and others.

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LEGAL AND SOCIAL PROBLEMS INHERENT IN RELIEF

By Dr. Wendy Stewart, of Los Angeles Bar

Second and last installment of article by Dr. Stewart on the above subject, the first of which appeared in *The Bulletin* for August.

DR. WENDY STEWART

PROBABLY, then, the sphere of operation of a border patrol under our present laws is restricted to informing intending immigrants that, if they do cross the line, they will be arrested for any illegal acts which they may be found to be committing. Not only are the natives of the given state and all persons who have migrated to it at any time under any conditions equally subject to arrest under the same conditions, but also the intending migrant was subject to arrest in the adjacent state he inhabited prior to his migration, for any illegal act he might be found committing there. If the police of State A threaten to arrest him unless he crosses the border into State B, and the police of State B threaten to arrest him if he does, and the circumstances of his transiency are such that he is accompanying it by the crime of vagrancy, punishable in either state, he may well elect to cross the boundary into the latter state, knowing that, when he has served his sentence there, the community will be powerless to eject him.[9]

Attempted interferences with the entry of individuals into places where they have not legal settlement are frequently circumvented and hence another objection which must be urged against them is the ease of their evasion. People came into California before there were railroads; they came in before there were roads. The stationing of patrols at usual points of entry into a state might thus prove a useless, though heavy, expenditure. Patrols at county borders would be faced with the additional problem involved in the fact that interurban street cars and buses frequently operate across such boundaries and that migrants could cross them with impeccable legality as fare-paying passengers at a minimal outlay involving only the fare from a point just outside the county to a point just inside it.

For the reasons stated, it would appear that, under our present laws, the exclusion of migratory persons by patrol methods is impracticable.

An attempt in California to put such methods into operation disclosed a further defect under the laws of that state. Members of the city police force of Los Angeles were purportedly made deputy sheriffs of inland border counties, with the consent of the boards of supervisors of the latter, to carry out the plan of protecting Los Angeles from the influx of indigent persons from other states, by their exclusion from California at the state boundary. On February 4, 1936, the City Council of Los Angeles requested from the City Attorney an opinion

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[9]Bradway in *Law and Social Work* points out that where the purpose of a law is to force a man to provide for his wife, and where a jail sentence may be imposed should he fail to do so, if the man would rather go to jail than support her, the law loses much of its force. The situation discussed above would seem to be somewhat comparable.

upon the legality of this procedure. In reply, the City Attorney delivered a carefully considered opinion, directed largely to the question of the legality of using city funds for the salaries and expense accounts of the police officers so deputized, in which he commented that under section 4326 of the Political Code of California deputy sheriffs need not be residents of the counties in which they are deputized, and concluded that the procedure was legal. A similar opinion was on March 18, 1936, rendered by the City Attorney of Los Angeles to the Chief of Police of Los Angeles, informing him that the members of his force were validly so deputized and that there was no incompatibility between their duties when so acting and their duties as members of the police force of Los Angeles. However, the Attorney General of the State of California, under date of February 18, 1936, upon the request of the Los Angeles Chamber of Commerce, had stated[10] as his opinion that police officers of the City of Los Angeles were ineligible as deputy sheriffs of any county other than Los Angeles, because, under the provisions of the California Political Code:[11]

> "no person is eligible to the position of a deputy sheriff in one of the counties of this state, except he be an elector of such county."

On March 17, 1936, in the District Court of the United States, Southern District of California, Central Division, Judge Albert Lee Stephens rendered an opinion in the case of *Langan v. Davis* (No. 844-S in Equity), dismissing for lack of jurisdiction a damage and injunction suit growing out of the activities of the border patrol, and brought against the chief of police of Los Angeles.

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[10]This opinion appears *in extenso* as Appendix B in *Transients in California,* report published by Division of Special Surveys, State Relief Administration of California, August, 1936.

[11]Presumably referring to section 4023 of Cal. Pol. Code.

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2. Transportation of the individual away from the place in which he is present without legal settlement, when he makes application for relief there. A person cannot legally be compelled to leave a locality on the ground that he has no legal settlement there. However, the laws of some states provide[12] that money for the expenses of transporting such a person to another locality may, under certain circumstances be appropriated from the relief funds of the county where application for aid is made. The practicability of effecting such transportation depends upon two factors: the discovery and verification of a place of settlement elsewhere, to which the individual can be returned, and the consent of the individual to go to such place of settlement. The obstacles encountered in practice arise from several causes.

Unwillingness of the person concerned to leave the locality where application for relief has been made sometimes constitutes the only difficulty. However, though this may perhaps be viewed as being somewhat of an imposition upon the local taxpayers, it cannot always be viewed as socially unjustifiable.

A man who had lived all his life in California, went to work in a shoe factory in an eastern state. Upon the advice of a physician, two years later, he returned to California for reasons related to his health. When he applied for relief, he was informed that he had lost his legal settlement in California and was not eligible for relief there. Had transportation back to the eastern state been offered to him, it is improbable that he would have accepted it. The reason that this offer was not made was that it was found that a five-year period of residence was essential to legal settlement in the eastern state concerned, and hence that the man had no settlement there, and was in fact, entirely without such settlement.

Such failure to discover any place where the individual has legal settlement constitutes an obstacle which is said to occur in fifty per cent of the cases under consideration.

LOSS OF "SETTLEMENT"

An inquiry from California, attempting to verify the settlement of an individual, who had been absent from the county of his former residence about eleven months, elicited a reply, written six weeks later, from an Eastern state, indicating that the person in question had had legal settlement in a certain county there, but that, under the laws of that state, such settlement was lost by absence for more than one year and that, as this person had been absent for a few days more than a year, he had lost such legal settlement, and his return therefore could not be authorized.

If a person, who has been absent nearly a year from the place of his legal settlement, is advised by his physician that it would be dangerous to life and health for him to undertake the return journey for several weeks, he has apparently no legal right to obtain an extension of the period in which settlement would be lost. Should he seek such extension, and his request be denied, or a reply sent to him, after the period for loss of legal settlement has expired, informing him only of the fact of its expiration, it seems that he would have no legal redress.

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[12]The California law, for example, provides: "Where a pauper or poor or indigent or incapacitated or incompetent person as herein described is not a lawful resident of the State of California, all expenses incurred in temporarily supporting and in transporting such person to another state may be paid by the county where such person applies for aid, unless it appears that other funds are available. (Cal. Stat. 1901, p. 636, Sec. 2 as amended 1931.)

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